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SLIDES: Idaho Rental Pool: Rules and Procedures, Idaho Water Resource Board

Jerry R. Rigby

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Idaho Rental Pool Rules & Procedures Idaho Water Resource Board

University of Colorado
School of Law
December 11, 2008
Jerry R. Rigby



Idaho Water Board History

- Article XV, Section 7 added to the Idaho Constitution by statewide referendum in November 1964.
- Article XV called for the creation of a "Water Resource Agency" but did not establish the agency.
- In 1965 the 38th Legislature established the Idaho Water Resource Board.
- IDWR and IWRB combined for Administrative Purposes in 1974.

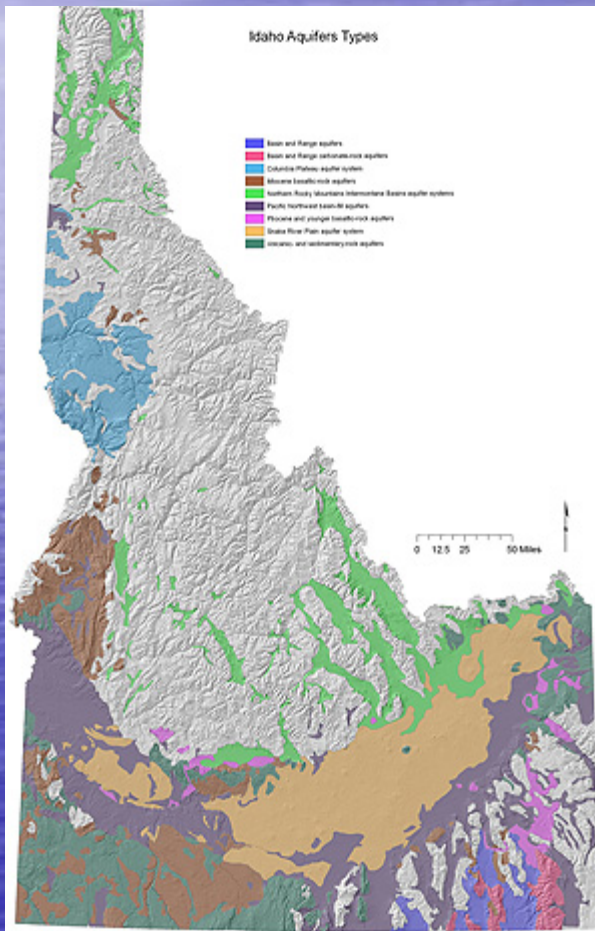


Legislative Authority

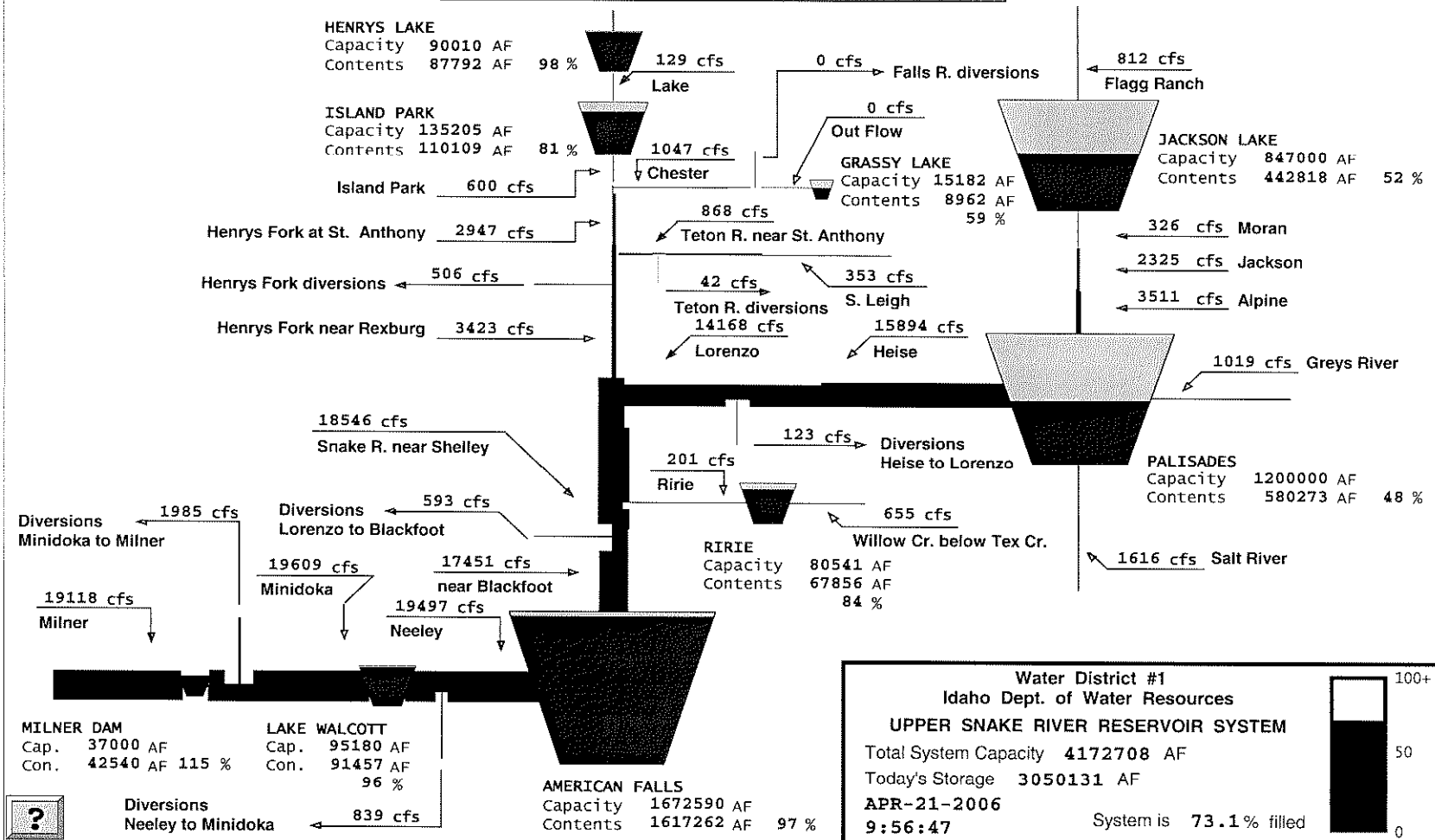
- Idaho Code 42-1732 created the IWRB.
- IWRB Powers and Duties established in I.C. 42-1734.
- IDWR Director assigned administrative duties to assist the Board in I.C. 42-1805(6).
- In 1988 State Water Planning duties were amended to include comprehensive basin planning and protected rivers authorities.
- Minimum Stream flow declared beneficial use I.C. 42-1501, IWRB only entity authorized to submit water right application.
- Idaho Code 42-1761 created the Water Supply Bank to be operated by the IWRB.



Aquifers of The Snake River & Thousand Springs



USRRS FLOW SCHEMATIC





Transfer Statutes

I.C. 42-222

- Application required to change the point of diversion, place of use, period of use or nature of use of all or part of the water.
- Department examines, obtains consents and provides notice of the proposed change.
- If any protest, duty of the director to investigate and to conduct a hearing.
- Director approves the change in whole, or in part, or upon conditions, provided:
 - no other water rights are injured
 - the change does not constitute an enlargement in use of the original right
 - the change is consistent with the conservation of water resources
 - is in the local public interest
 - the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates
 - the new use is a beneficial use



Water Bank Substitute For Transfer

- I.C. 42-1764. The approval of a rental of water from the water supply bank may be a substitute for the transfer proceeding requirements.
- Water rights obtained by the board or by a local committee appointed by the board and credited to the water supply bank not subject to forfeiture for nonuse.
- The rental of water rights from the water supply bank shall not constitute a dedication to the lands of any renter since the rental or distribution of water by the water bank is only incidental to its primary purposes.



Water Supply Bank Created

I.C. §42-1761

- The water resource board shall have the duty of operating a water supply bank.
- The water supply bank
 - shall make use of and obtain the highest duty for beneficial use from water
 - provide a source of adequate water supplies to benefit new and supplemental water uses
 - provide a source of funding for improving water user facilities and efficiencies.



Rules and Regulations -- Acquisition of Water Rights

IC §42-1762

- Water resource board adopts rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank in compliance with chapter 52, title 67, Idaho Code
- Board may purchase, lease, or otherwise obtain decreed, licensed or permitted water rights to be credited to the water supply bank
- Water rights may be retained in the water supply bank for a period as determined by the board, all under such provisions as are specified in the terms of the purchase or lease



Rentals From Bank-

Director Approval I.C. §42-1763

- Terms and conditions of any rental from the water supply bank must be approved by the director.
- Director may reject and refuse approval: in whole, in part or with conditions, where the proposed use:
 - will reduce the quantity of water available under other existing water rights
 - water supply involved is insufficient for the purpose for which it is sought
 - would cause the use of water to be enlarged beyond that authorized under the water right to be rented
 - will conflict with the local public interest as defined in section 42-202B, Idaho Code (direct affect on Public water resource).
 - rental will adversely affect the local economy of the watershed or local area.



Rental of Water to Augment Flows for Listed Anadromous Fish (Nez Perce) IC §42-1763B

- Snake River Water Rights Agreement of 2004 confirmed by the 108th Congress in the "Snake River Water Rights Act of 2004," (December 8, 2004)
- U.S. bureau of reclamation can lease through Water Bank: proposes to release up to 427,000 a/f of leased or uncontracted water from the Snake River basin to reservoir storage above Lewiston
- Any water made available under this section shall be obtained only from willing lessors.
- shall be rented pursuant to this section only through the local rental committee.
- act shall be null & void upon the expiration or termination of the Snake River Water Rights Agreement of 2004 or Biological Opinion is found to be arbitrary, capricious or otherwise unlawful or set aside.



3.10.

Table 1

RENTAL POOL SUPPLY DETERMINATION TABLE

November 1

Stipulated Augmentation Rental Dist 01

Carryover <----- April 1 Heise Forecast 1000s af ----->

| 1000s af | < 2,450 | < 2,920 | < 3,450 | < 4,208 | < 5,042 | < 5,670 | > 5,670 |
|----------|---------|---------|---------|---------|---------|---------|---------|
| 0 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 100 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 200 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 300 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 400 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 500 | 0 | 0 | 0 | 0 | 150000 | 185000 | 185000 |
| 600 | 0 | 0 | 0 | 60000 | 150000 | 185000 | 185000 |
| 700 | 0 | 0 | 0 | 60000 | 150000 | 185000 | 185000 |
| 800 | 0 | 0 | 0 | 60000 | 150000 | 185000 | 185000 |
| 900 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,000 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,100 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,200 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,300 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,400 | 0 | 0 | 60000 | 60000 | 150000 | 185000 | 185000 |
| 1,500 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 1,600 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 1,700 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 1,800 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 1,900 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 2,000 | 0 | 0 | 100000 | 150000 | 185000 | 185000 | 185000 |
| 2,100 | 0 | 0 | 100000 | 150000 | 205000 | 205000 | 205000 |
| 2,200 | 0 | 0 | 100000 | 150000 | 205000 | 205000 | 205000 |
| 2,300 | 0 | 0 | 100000 | 150000 | 205000 | 205000 | 205000 |
| 2,400 | 0 | 0 | 100000 | 150000 | 205000 | 205000 | 205000 |
| 2,500 | 0 | 0 | 100000 | 150000 | 205000 | 205000 | 205000 |
| 2,600 | 0 | 0 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 2,700 | 0 | 0 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 2,800 | 0 | 0 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 2,900 | 0 | 0 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,000 | 60000 | 60000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,100 | 60000 | 60000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,200 | 100000 | 100000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,300 | 100000 | 100000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,400 | 100000 | 100000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,500 | 100000 | 100000 | 185000 | 185000 | 205000 | 205000 | 205000 |
| 3,600 | 100000 | 100000 | 185000 | 185000 | 205000 | 205000 | 205000 |



Local Committees – (Committee of Nine) I.C. §42-1765

- The water resource board may appoint local committees, including water district advisory committees to facilitate the rental of **stored** water.
- Committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the board.
- Local rental committee shall determine portion of the proceeds for the year from the lease of stored water to be paid to consenting contract holders of the storage water rights as reimbursement for their costs and that portion to be retained by the district for public purposes.



Water Districts Advisory Committees

I.C. 42-605

- Water users may choose an advisory committee to be composed of members selected by users:
 - shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district.
 - may be authorized to carry out policies as set forth in resolutions adopted by the water users.
 - may also serve as the local committee to facilitate the rental of stored water if appointed by the water resource board under the provisions of section 42-1765, Idaho Code.



WD01 Rental Pool Procedures Adopted 2005

- Space holders may participate in three after-the-fact rental processes established by these procedures:
- (1) The allocation of storage defined in these procedures as "late season fill" as the water supply made available for certain storage rentals made previously by the Committee during the irrigation season;
- (2) making spaceholder's space and water accruing thereto available to the rental pool for other users and uses through private leases and
- (3) making spaceholder's space and water accruing thereto available to the rental pool for other users and uses through specific assignments of water to the rental pool



Late Season Fill

- 50,000 Acre feet of Late Season Fill Water will be made available for rentals each year (plus 5,000 for small historical users)
- If the reservoirs do not fill, each participating spaceholder will be paid for water leased through the rental pool the previous year based upon the extent to which the spaceholder's storage is found to have been impacted in the current year from the past year's rental activities.
- Watermaster will determine:
 - (1) what the fill would have been had the previous year's rentals not taken place,
 - (2) the storage space from which rental water was actually supplied for the previous year's rentals and
 - (3) the amount of water each spaceholder's current allocation was reduced by the previous year's rental activities. Impacted spaceholders (who's space actually ended up supplying the water) will be paid, at the rate established in rules.



Private Leases

- Spaceholders may also enter into private leases, either within a system or between systems, for agricultural purposes above Milner.
- The lease price may be different from the current rental price.
- One hundred percent (100%) of the lease price shall be paid to the Lessors less all established administration fees and Board surcharges.
- If refill of the storage system does not occur the following year and private leases caused impacts determined then the lessor's subsequent year's storage allocation shall be reduced by an amount equal to such impacts.



Specific Assignments

- Spaceholder may assign additional water for agricultural rentals or recharge.
- If refill of the storage system does not occur:
 - the assigning spaceholder's subsequent year's storage allocation shall be reduced by an amount equal to such impacts and that portion of his accrual will be reallocated to mitigate the impacts.
- 100% of the rental price shall be paid to the assignor, less all established administrative fees and Board surcharges



Payments to Spaceholders Participating in Late Season Rental

- $$P = \left(\frac{R \times SP}{TSP} + \frac{R \times ST}{TST} \right)$$

- Where:

P = Payment to Participating Spaceholder

R = 70% Net Proceeds from rental of late season fill

SP = Space of Participating Spaceholder

ST = Storage water of Participating Spaceholder

TSP = Total Space in System

TST = Total Storage in System



Payments to Impactees

- An Impact Fund created by the District on behalf of the Committee to hold 30% of the Net Proceeds for the benefit of impacted participating spaceholders.
- Proceeds from the Impact Fund shall be paid to participating spaceholders who have been determined to have provided water for the previous years rentals, using the following formula:
 - $Sp = (Isp * RP) \text{ or } \frac{1}{2} IF * (Isp / Ispt) \text{ (whichever sum is less)}$
 - Where:
 - Sp = Impacted Spaceholder payment per Acre Foot
 - Isp = Spaceholder's impacted space in acre feet
 - RP = Rental Price
 - IF = Impact Fund
 - $Ispt$ = Total of all Spaceholder's impacted space in acre feet



Priorities in Rental Pool

- Priorities for renting water, other than for flow augmentation (late season fill) shall be as follows:
- (1) First priority: Spaceholders, who are rental pool participants and whose storage was found to have been impacted by rentals from the previous year shall have the highest priority in acquiring rental water, up to the annual impact to that spaceholder.
- (2) Second priority: Spaceholders, for agricultural purposes up to the amount of their unfilled storage space.
- (3) Third priority: Rental by non-spaceholders for agricultural purposes above Milner or other uses above Milner.
- (4) Fourth priority: Rental for uses below Milner.



Late Season Opt Out Provision

- All spaceholders who agree to participate in the Rental Pool will be considered to be suppliers and will be able to be full participants in all benefits of the Rental Pool described in these Procedures. Spaceholders are deemed to be a voluntary participant of the Rental Pool for each and every year thereafter unless a spaceholder advises the Watermaster prior to February 1 of any given year that he wishes to "opt out". Anyone who opts in will be eligible for all of the participation benefits of the Rental Pool beginning the year he opts in.



Newest Twists:

- Statutorily created Minimum Stream Flows in designated reaches of Big Wood River
 - No normal requirement that it be maintained
 - Water donated by gift to the Board's water bank in "trust"
 - Local Committee comprised of water district and others
 - Director must determine no injury



Municipalities & Subdivisions

- State now requires P&Z planners to require irrigation water stay with the land
 - Pressurized systems – dual systems
 - Irrigation Districts in Rural Areas Oppose
 - Requires specialized personnel & expertise
- Alternative Approach – Mitigation for new Well permits
 - Allows Districts to control its own water and recharge
 - Difficult to determine if replacing "Same Source" water.



When All Else Fails The Real Water Law of Idaho

